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8 *BAC Home Loans Servicing, LP (as named*
9 *and also improperly named as Bank of*
10 *America Home Loans),*
11 *Bank of America, N.A. and MERS*

12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**

14 THOMAS F. WEST and DIANA M. WEST,

15 Plaintiffs,

16 vs.

17 BANK OF AMERICA HOME LOANS; BANK
18 OF AMERICA N.A.; BAC HOME LOANS
SERVICING, LP; and MERS (Mortgage
Electronic Registration Systems),

19 Defendants.

Case No.: 2:10-cv-01966-JCM-PAL

20 **OPPOSITION TO PLAINTIFFS'**
21 **IMPROPER JOINDER OF**
22 **RECONTRUST**

23 Defendants BAC Home Loans Servicing, LP (as named and also improperly named as Bank
24 of America Home Loans) ("BAC"), Bank of America N.A. ("BOA N.A."), Mortgage Electronic
25 Registration Systems ("MERS") (collectively "Defendants") and purported defendant ReconTrust
26 Company, N.A. ("ReconTrust") hereby file their Opposition to Plaintiffs' improper "joinder" of
27 purported defendant ReconTrust. Not only is Plaintiffs' "joinder" procedurally improper, but even if
28 Plaintiffs had brought a proper motion for leave to amend the complaint and/or add a party, such
motion would be untimely, as the deadline set by this Court to add parties has already passed.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

On April 4, 2003, Quicken Loans Inc. ("Quicken") loaned Plaintiffs \$123,900.00 ("the loan") to purchase the property located at 5620 Scenic Pointe Avenue, Las Vegas, Nevada 89130, Parcel #125-25-414-006 ("the property"). On April 10, 2003, the loan was secured by a deed of trust on the property recorded in the Clark County Recorder's Office. Mortgage Electronic Registration Systems, Inc. ("MERS") acted as nominee for Quicken and was the nominal beneficiary under the deed of trust. Orange Coast Title Company was the trustee.¹ On October 13, 2010, Plaintiffs filed their Complaint against BAC (improperly named as "Bank of America Home Loans"). On November 22, 2010, Plaintiffs filed an Amended Complaint, naming BAC Home Loans Servicing, LP (as named and also improperly named as Bank of America Home Loans) ("BAC"), Bank of America N.A. ("BOA N.A."), and Mortgage Electronic Registration Systems ("MERS") as Defendants. Shortly after filing their original complaint, Plaintiffs became delinquent on their mortgage payments. As a result, ReconTrust, the properly substituted trustee, On or about April 19, 2011, the same day that the loan and deed of trust were assigned to BAC and the same day that ReconTrust was substituted as trustee, ReconTrust properly recorded a Notice of Default (attached to Plaintiffs' Joinder as Exhibit C). Plaintiffs now attempt to improperly "join" ReconTrust as a defendant even though: (1) "joinder" is not the proper procedural method to add ReconTrust as a party; and (2) even if Plaintiffs had employed the proper procedure and filed a motion to amend their complaint to add ReconTrust as a defendant, the deadline to file such a motion has passed and Plaintiffs are barred from adding ReconTrust as a defendant in the instant action.

¹ Following Plaintiffs' filing of the instant action, on or about April 18, 2011, MERS executed a "Substitution of Trustee and Full Reconveyance" to ReconTrust and recorded same on April 19, 2011 in the Clark County Recorder's Office (attached to Plaintiffs' Joinder, along with the assignment of deed of trust, as Plaintiffs' Exhibit B).

On or about April 18, 2011, MERS assigned the subject deed of trust, together with the subject loan, to BAC and recorded the assignment on April 19, 2011 (attached to Plaintiffs' Joinder, along with the Substitution of Trustee, as Exhibit B).

1 **II.**

2 **LEGAL ARGUMENT**

3 **A. "Joinder" Is Not the Proper Method to Add a Party**

4 Plaintiffs attempt to "join" ReconTrust as a party is procedurally improper. Plaintiffs appear
5 to rely on LR 19 and LR 20 for the proposition that "Defendants through their own actions have
6 joined Recon [sic] as a Defendant."² Plaintiffs' Joinder, 2:20. Plaintiffs assertion is incorrect for two
7 reasons: (1) Defendants cannot simply "join" another party due to their alleged "actions, and; (2) the
8 proper method used to add a party is governed by LR 15-1, which governs the procedure employed
9 to amend pleadings or add parties. Pursuant to LR 15-1, Plaintiffs must file a motion to amend with
10 this Court. LR 15-1 provides:

11 (a) Unless otherwise permitted by the court, the moving party shall attach the proposed
12 amended pleading to any motion to amend so that it will be complete in itself without
13 reference to the superseding pleading. An amended pleading shall include copies of all
14 exhibits referred to in such pleading.

15 (b) After the court has filed its order granting permission to amend, the moving party shall
16 file and serve the amended pleading.

17 Here, Plaintiffs purport to add ReconTrust simply by filing a "joinder" with this Court.
18 Plaintiffs have failed to file a motion to amend, along with a proposed amended pleading, in order to
19 attempt to add ReconTrust as a proper defendant.

20 **B. Any Attempt By Plaintiffs to Add Additional Parties is Untimely**

21 Even if Plaintiffs had filed a proper motion for leave to amend, along with the required
22 proposed amended pleading, such motion is untimely, as the deadline to amend pleadings or add
23 parties, as outlined in the discovery plan approved by this Court, was February 15, 2011. The close
24 of discovery is May 15, 2011, just a few days from the filing of this Opposition. Plaintiffs should
25 not be permitted to not only improperly, but also untimely, add a party to this litigation when
26 discovery is on the verge of closing.

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28 ² It appears that Plaintiffs actually purportedly rely on FRCP 19 and 20, which govern the required and
permissive joinder of parties, respectively.

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III.

CONCLUSION

For these reasons, Defendants and purported defendant ReconTrust respectfully request that this Court deny Plaintiffs' improper "joinder" of purported defendant ReconTrust.

DATED this 12th day of May, 2011.

AKERMAN SENTERFITT LLP

/s/ Christine M. Parvan

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Home Loans, Bank of America N.A., MERS and
purported defendant ReconTrust Company, N.A.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 12th day of May, 2011 and pursuant to Fed. R. Civ. P. 5(b), I served and deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **OPPOSITION TO PLAINTIFFS' IMPROPER JOINDER OF RECONTRUST**, postage prepaid (if necessary) to all parties listed as follows:

THOMAS F. WEST
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Pro Se Plaintiffs

/s/ Stacy Warner
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